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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,574	01/25/2002	Jordan C. Bonney	1032-003US01	1809

28863 7590 12/23/2005
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EXAMINER

ENG, DAVID Y

ART UNIT PAPER NUMBER

2155

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/057,574	Applicant(s) BONNEY ET AL.	
	Examiner DAVID Y. ENG	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/11/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-42 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-42 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 9, 43 and 44 have been cancelled. The active claims are 1-8, 10-42 and 45.

A new abstract that is more aptly descriptive of the invention claimed is again requested. The present abstract is nothing more than a component list instead of the gist of the invention claimed, for example, the significant or the purpose of capturing replay data and how the replay data is being processed and used such that a problem is solved.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8, 10-42 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 4 of claim 1, there is no antecedent basis for "the captured network data". Claims 29 and 39 have similar defect.

Scope of the claims is not clear. No meaningful result is seen from the claims. The claims recite capturing of replay data from a network but have no use of it. The last step (the step of issuing commands, see all independent method claims) has no functional relationship with the rest of the steps. The plurality of agents are recited for capturing replay packets from a network and communicating the same back to themselves via the same network (see the steps of capturing and communicating in claim 1 for example). There is nothing meaningful accomplished by the claims. The apparatus claims and dependent claims have similar defects. See claim 29 for example.

It is not clear how the steps in the dependent claims are related to their parent claims. It is not clear in what order with respect to the parent claims the steps of the dependent claims are executed. See claim 2 for example.

Further with respect to the apparatus claims, it appears that no selection of the replay data from the packets by the replay module is possible because the packets are captured by the agents from the network and not by the replay module. Note that the replay module is connected to the network and not to the agents.

In line 1 of claim 39, it is not clear what a medium is. Applicants are suggested to insert "computer storage" before "medium".

Claims 21-28 and 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller (USP 6,625,648).

Details of the rejection have already been set forth in the last Office action. The details are incorporated herein by reference thereto.

In the communication filed on 10/11/2005, Applicants said that the Examiner has not established that Schwaller teaches replay data as recited in claim 21. On the contrary, the Examiner identifies the test signals and applications in Schwaller as the teaching of replay data. See page 3 of the Office action. No patentable weight is given to the term "replay" since there is nothing, not even remotely, recited in the claims that relate to any replay of anything. The replay data as recited is nothing more than packets traveling within the network between the agents. As to claim 32, the replay module is recited for storing replay data and commands and for communicating portions of the replay data and the commands to a plurality of agents. The replay module is not recited

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for controlling any conditional flow of portions of the replay data or network packets.

Note also that the agents are recited to couple to a network only and not for controlling any conditional flow. The system as recited in claim 32 is nothing more than a plurality of agents and a storage medium for communicating data and commands to the agents via a network. No patentable weight is given to the intended use of the packets stored in the replay medium. No other meaningful function is seen from the claims. It is not clear the condition flow is for controlling the issuing of commands or for controlling the introduction of replay data? Further, the system of Schwaller is capable of issuing commands also. See page 3 of the last Office action.

Applicants fail to point out why the claims are patentable distinct over Schwaller. Merely set forth what the claims require is not sufficient. In re Nielson, 816 F.2d 1567, 2 USPQ 1525 (Fed. Cir. 1987). The court held that simply pointing out what a claim requires with no attempt to point out how the claims patentably distinguish over the prior art does not amount to a separate argument for patentability.

Claims 1-8, 10-20, 29-31, 39-42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwaller (USP 6,625,648) in view of Allred (USP 6,519,723).

Schwaller teaches claim combination set forth in the last Office action. Schwaller does not appear to teach capturing of network traffic data. Capturing traffic data such as packets is well known in testing and monitoring system. Allred teaches a monitoring and testing system having a protocol analysis for capturing packets from the network (see lines 19 et seq. of column 13 in Allred). Allred also includes extracting portions of frames from the captured packets (see line 21 of column 13). From the teaching of

Allred, it would have been obvious to a person of ordinary skill in the art to capture the network packets in Schwaller such that performance of the network can be analyzed more accurately.

As to the claims directed to trigger, see trigger in line 16 of column 20 in Schwaller.

As to the claims directed to aggregator, see result collector 64 in Figure 3 and line 41 of column 12 in Schwaller.

Applicant's arguments filed 10/11/2005 have been fully considered but they are not persuasive.

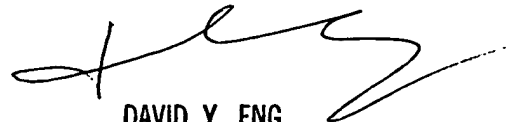
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication should be directed to DAVID Y. ENG
at telephone number 571-272-3984.



DAVID Y. ENG
PRIMARY EXAMINER